THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.3444 OF 2007

Dated 03-12-2007

Between:

P.Atchaiah ... Petitioner

And

The District Collector and
Three others ... Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.3444 OF 2007

O R D E R:

Heard Sri Chalapathi Rao, learned counsel, representing Sri V.Brahmaiah Chowdary, learned counsel for the petitioner, and the learned Assistant Government Pleader for Civil Supplies.

2. This writ petition is filed for a writ of Mandamus declaring the order of the first respondent in Case No.CS1/1896/2006, dated 12-01-2007 confirming the orders of the second respondent in Case No.CS1/1918/2006, dated 20-11-2006 and the orders of the third respondent in Proceedings No.D/2606/2005, dated 04-05-2006 as illegal, arbitrary, in violation of principles of natural justice and fair play besides established judicial precedents and consequently set aside the same.

3. It is stated in the affidavit filed in support of the writ petition that the petitioner had been appointed as Fair Price Shop dealer in the year 1995. On the basis of a report alleged to have been made by the third respondent that the petitioner had indulged in certain irregularities in distribution of essential commodities on 24-12-2005, the second respondent issued a show cause notice dated 03-01-2006 alleging that there was excess of 0.68 quintals of PDS rice, 4.35 quintals of rice that was earmarked for mid-day meals and that there was no stock to a tune of 13.60 quintals of rice and that the petitioner had not submitted the coupons in respect of food for work programme rice and directed the petitioner to submit his explanation

within 7 days from the date of receipt of the same. It is stated that the petitioner had submitted his explanation on 23-01-2006 in detail while requesting the third respondent that if any lapses were found they may be treated as first mistake and to exonerate him and he enclosed an application of Vidya Committee, Upper Primary School, Gudimalkapuram bringing to the notice of the third respondent that the variation alleged in the show cause notice dated 03-01-2006 in respect of rice of mid-day meals was kept at the shop of the petitioner as there was no space to put it. It is further stated that the third respondent without considering the explanation and without giving any reason for disbelieving the explanation, passed a cryptic and non-speaking order dated 04-05-2006 cancelling the authorization of the petitioner.

It is further stated that the petitioner preferred an appeal against the order of the third respondent dated 04-05-2006 before the second respondent while bringing to his notice through his counsel that there was double entry in respect of 5 cards which amount to 0.68 quintals; that the certificate/application of Vidya Committee clearly show that the MMDS rice belong to it and the same was kept for safe custody in the shop of the petitioner; that the complaint lodged by the Contractor alleging variation of about 13.60 quintals was far from truth and that the same was made by him as he had not yielded to his requests and however since confiscation was ordered, an amount of Rs.3,371/- was paid by him for the lesser quantity. It is further stated that the second respondent too without giving any reasons confirmed the orders of the third respondent by order dated 20-11-2006 with an observation that "he don't want to interfere with the orders of the second respondent". It is further stated that the action of respondents 2 and 3 was in clear negation of established judicial precedents and

being the quasi-judicial authorities they ought to have considered the explanation submitted with reference to the evidence on record and should have given reasons for not accepting the same while dealing the statutory appeals or petitions.

It is further stated that the petitioner had filed W.P. No.25179 of 2006 before this Court challenging the legality and validity of the orders of the second and third respondent and he requested his counsel to withdraw the writ petition as he filed a revision before the first respondent. It is further stated that the first respondent also without giving any reasons dismissed the revision confirming the orders of the second and third respondents. It is further stated that the respondents 2 and 3 having directed to deposit the equivalent amount to that of the alleged variation and though the petitioner had complied with the said direction, his authorization was cancelled. It is further stated that the respondents could not impose the punishment twice on the self-same allegations and charges as it amounts to double jeopardy. It is further stated that the impugned orders were in violation of principles of natural justice and fair play.

It is further stated that the petitioner and his family members are depending upon the meager income derived from the authorization and that there is no other source of income either to him or to his family for their sustenance. It is further stated that the respondents ought to have considered the past record before passing the order though not considered the explanation in its true perspective. In these circumstances, the petitioner had approached this Court praying for appropriate remedies.

4. The relevant portion of the impugned order passed by the first

respondent, dated 12-10-2007, reads as hereunder-

> "After careful consideration of the explanation of the revision petitioner and the records put forth it is observed that basing on the report submitted by the Mandal Revenue Officer, Mellacheruvu, the Revenue Divisional Officer, Suryapet has issued a show cause notice and after considering the explanation submitted by the revision petitioner, the Revenue Divisional Officer has passed orders of canceling the authorization. The Joint Collector, Nalgonda adjudicates the 6-A case by confiscating the value of the variation quantity of rice. The revision petitioner has remitted the confiscation amount. Action U/s 6-A of the EC Act is dealt with the seized stock and the authority under the said law observed the guilty of the petitioner and passed orders of confiscation. The petitioner himself agreed that there are mistakes in his accounts and he had noted some entries on many times, which clearly proves that the petitioner has not maintained proper accounts and the said charge is held proved.
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> Further in the written arguments the appellant clearly stated that 718 Qtls of rice has been lifted by him from godown (IMG/MLS point), but the weight is not correct and there is a variation of 13.60 qtls. This explanation is not convincing. It is the responsibility of the dealer to lift the correct quantity from godown and there is a set procedure to ensure that quantity is correctly measured at IMG point and knowing pretty well the procedures the appellant has taken the plea that weightment is not correct and contractor filed false complaint against his because he (FP shop dealer) did not cooperate with the contractor.
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> In view of the above discussions, I don't see any valid reason to interfere with the orders of Joint Collector."

5. In the counter-affidavit filed it is stated that on the complaint of one Sri Chakra Reddy, the Mandal Revenue Officer, Mellacheruvu

inspected the Fair Price Shop, Gudimalkapuram on 24-12-2005 and found that there was variation in the stocks of rice as per the stock register, distribution register and coupons submitted by Sri P.Atchaiah, the Fair Price Shop dealer. As per the distribution register the dealer distributed 48.32 quintals of PDS rice as against 47.64 quintals supplied to him. On physical verification 4.35 quintals of mid-day meals rice was also found in excess. It reveals that the dealer had made wrong entries in the distribution register with a mala fide intention. It is further stated that 718 quintals of food for work rice was supplied to the dealer and the dealer had distributed 704.40 quintals of rice and produced coupons to the Mandal Revenue Officer. As such there should be a balance of

13.60 quintals, but there was no rice stock available with the dealer. On receipt of the report vide Mandal Revenue Officer, Mellacheruvu Lr.No.B/5677/2005, dated 24-12-2005, the second respondent issued a notice dated 03-01-2006, to the said dealer. The dealer submitted his explanation dated 23-01-2006, which was perused and found to be not convincing. Hence, having given reasonable opportunity and considering the explanation of the petitioner, orders were issued vide proceedings No.D/2606/2005, dated 28-01-2006 for suspension of petitioner's authorization. It is further stated that the Joint Collector, Nalgonda had also disposed of the case filed by the Mandal Revenue Officer, Mellacheruvu u/s 6-A of the Essential Commodities Act, 1955 and ordered for confiscation of 6.42 quintals of rice i.e. Rs.3,371/- in favour of the Government vide case No.CS1/2839/2005, dated 10-04-2006. The authorization of the petitioner was cancelled after due enquiry vide proceedings No.Lr/2606/2005, dated 04-05-2006. It is further stated that the appeal filed by the petitioner before the Joint Collector against order dated 04-05-2006 was dismissed in case

No.CS1/918/2006, dated 20-11-2006. It is also stated that the petitioner filed a revision before the District Collector and the same was dismissed in case No.CS1/1896/2006, dated 12-01-2007 after giving reasons and considering the material. Certain other facts had also been stated.

6. This is a case where the third respondent made an order, cancelling the authorization of the petitioner, which was confirmed by the second respondent and the same was carried in revision before the first respondent and the first respondent had also confirmed the same. Certain submissions were made that the variation if any to be taken is not too serious, it is negligible and in such a case to make such an order is too harsh and it is evidently disproportionate.

7. This Court while exercising the writ jurisdiction may have to carefully scrutinize whether there is any infirmity in the decision making process. The counsel for the petitioner is unable to point out any procedural illegality or legal infirmity. In the light of the nature of the orders, which were made by the respondents, this Court is thoroughly satisfied that this is not a fit case to interfere with under Article 226 of the Constitution of India.

8. The writ petition is accordingly dismissed. No order as to costs.

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P.S.Narayana,J

Dated 3rd December, 2007

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